STATE OF MICHIGAN

COURT OF APPEALS

TARIK SHEENA,

Plaintiff-Appellant,

v

BANK OF AMERICA, N.A., f/k/a LASALLE BANK, N.A., and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Defendants-Appellees.

UNPUBLISHED
March 27, 2014

No. 312866
Oakland Circuit Court
LC No. 2012-124446-CH

Before: GLEICHER, P.J., and SAAD and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals by right the order denying his motion for summary disposition under MCR 2.116(C)(10) and granting summary disposition in favor of defendants pursuant to MCR 2.116(I)(2). We affirm.

Plaintiff filed an action against defendants to quiet title to property. Although plaintiff[1] acknowledged entering into mortgage agreements, he alleged that improprieties in the loan and assignment process by defendants rendered the "mortgage and note nullities," violated "law," and became "void." Plaintiff moved for summary disposition. Defendants opposed the motion and sought summary disposition in their favor pursuant to MCR 2.116(I)(2). Plaintiff did not file a response to defendants claim to relief in their favor. Rather, plaintiff filed a motion to amend the complaint, seeking to "prevent sheriff's deed on mortgage sale" or "judicial foreclosure." The court granted the motion to amend the complaint, provided that plaintiff delete paragraph 29 and references to "notice of mediation." The parties apparently agreed that the cross-motions for summary disposition were not impacted by the amended complaint. Ultimately, the trial court

[1] Plaintiff's wife, Arline Sheena, was also a party to the mortgage agreements, but she was not named in the underlying litigation.

denied plaintiff's motion for summary disposition and granted summary disposition in favor of defendants, concluding that plaintiff failed to meet his evidentiary burden.[2]

Plaintiff alleges that he proffered sufficient evidence to preclude summary disposition in favor of defendants by presenting evidence of fraud or irregularities by defendants during the foreclosure process.[3] We disagree.

A trial court's ruling regarding a motion for summary disposition presents a question of law subject to de novo review. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id*. "The nonmoving party may not rely on mere allegations or denials in the pleadings." *Id*. The documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362, 371-372; 547 NW2d 314 (1996).

When an opposing party provides mere conclusions without supporting its position with underlying foundation, summary disposition in favor of the moving party is proper. See *Rose v Nat'l Auction Group*, 466 Mich 453, 470; 646 NW2d 455 (2002). "The affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion." *SSC Assoc Ltd Partnership v Gen Retirement Sys*, 192 Mich App 360, 364; 480 NW2d 275 (1991). The interpretation and application of the law presents an issue allocated to the courts, not the parties or their expert witnesses. *McCoig Materials, LLC*, 295 Mich App at 698 n 4; *Hottmann v Hottmann*, 226 Mich App 171, 179-180; 572 NW2d 259 (1997).

Defendants provided documentary evidence demonstrating their right to foreclose on the property by advertisement, which supported summary disposition under MCR 2.116(I)(2). MCL 600.3204(3) provides, "[i]f the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of [the foreclosure] sale . . . evidencing the assignment of the mortgage to the party foreclosing the mortgage." With their response to plaintiff's motion for summary disposition, defendants attached copies of the first mortgage and the assignment of the first mortgage and note to defendant Bank of America. With

---

[2] The amended complaint did not comport with the trial court's ruling regarding the removal of factual averments and allegations surrounding notice of mediation. The court's opinion and order directed the parties to address the mediation and judicial foreclosure claims or stipulate to resolve them. The parties submitted a stipulation resolving the claims to allow the closure of the case.

[3] Plaintiff does not allege that the trial court erred by denying his motion for summary disposition, and therefore, we do not address it.

respect to the second mortgage and note, defendants provided a notice from the FDIC indicating that defendant Bank of America acquired LaSalle Bank Midwest, the holder of the second mortgage and note. Defendant Bank of America's acquisition of LaSalle Bank Midwest occurred before the execution of the mortgage agreements.[4] Such an acquisition or merger transferred the assets of LaSalle Bank Midwest to Bank of America by operation of law. See *Kim v JPMorgan Chase Bank, NA*, 493 Mich 98, 111; 825 NW2d 329 (2012). MCL 600.3204(3) does not apply when a mortgage is acquired by operation of law. *Id.* at 109-110.[5] A merger or consolidation of banking institutions is acceptable. See 12 USC 215a.

Once defendants demonstrated that defendant Bank of America had the authority to foreclose by advertisement, the burden shifted to plaintiff to provide evidence establishing a genuine issue of material fact. *McCoig Materials, LLC*, 295 Mich App at 693. Plaintiff did not meet this burden because he failed to provide any substantively admissible evidence in support of his allegation that defendant Bank of America no longer held the mortgages and notes because they were assigned to a REMIC trust. See MCR 2.116(G)(6); *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 441; 814 NW2d 670 (2012). Plaintiff's "Property Securitization Analysis Report" prepared by Arthur Bernardo contained conclusions of law and did not provide the underlying foundation to support the claimed creation and transfer to a trust. Summary disposition is proper when a party fails to support its position with underlying foundation, see *Rose*, 466 Mich at 470, and the interpretation of the law presents an issue for the courts, not the expert witnesses, *McCoig Materials, LLC*, 295 Mich App at 698 n 4. Moreover, the affidavit failed to comply with the court rules, MCR 2.113(A); *SSC Assoc Ltd Partnership*, 192 Mich App at 364. In light of the deficiencies in plaintiff's documentary evidence, we need not address his challenge to the assignment of the first mortgage and the allegation of "robo-signing."

Affirmed. Defendants, the prevailing parties, may tax costs. MCR 7.219.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Karen M. Fort Hood

---

[4] In plaintiff's brief on appeal, he acknowledges that the acquisition of LaSalle Bank Midwest occurred on October 1, 2007, and the mortgages were executed in February 2008, and June 2008.

[5] In *Kim*, 493 Mich at 108-110, 112, one bank did not merely voluntarily assume the assets of another bank or merge. Rather, the assets of the failed bank were acquired by the Federal Deposit Insurance Corporation (FDIC) as a receiver, and the defendant purchasing bank then voluntarily purchased the assets from the FDIC. This is distinguishable from the present facts wherein a merger of banks occurred without federal assistance prior to the execution of the mortgages. See 12 USC 215a; *Kim*, 493 Mich at 111, n 23.